

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

*The County of Summit, Ohio, et al. v. Purdue
Pharma L.P., et al.*

Case No. 18-op-45090

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**PHARMACY DEFENDANTS' MOTION TO DISMISS
THIRD AMENDED COMPLAINT AND AMENDMENT BY INTERLINEATION**

Defendants CVS, HBC/Giant Eagle, Rite Aid, Walgreens, and Walmart (the “Pharmacy Defendants”) move to dismiss the Third Amended Complaint and the Amendment by Interlineation with prejudice to the extent they purport to state a claim based on the Pharmacy Defendants’ dispensing, on the basis that they fail to state a claim upon which relief can be granted for the reasons stated in the accompanying memorandum of law.

The Pharmacy Defendants recognize that the Track One-B Case Management Order provides that “the Court will not receive additional motions to dismiss on *distributing* claims.” ECF No. 2940 at 4 (emphasis added). The order by its terms, however, does not expressly foreclose motions to dismiss on *dispensing* claims, though further communications with the Special Master suggest that they too might not be received. While the Pharmacy Defendants will answer the Amendments by Interlineation as directed, they nevertheless believe it is important and appropriate to bring to the Court’s attention certain reasons—completely independent of the Court’s rulings on prior motions to dismiss only distribution claims—why Plaintiffs’ new dispensing claims fail as a matter of Ohio law and federal pleading standards. *See* Fed. R. Civ. P.

12(b)(6) (“a party may assert the following defenses by motion,” including “failure to state a claim upon which relief can be granted”). The Court’s prompt consideration of this motion and dismissal of Plaintiffs’ legally deficient dispensing claims will save the parties and the Court enormous resources that would be better directed toward the litigation and resolution of other cases and the claims that are at the core of this vast MDL.

Date: December 23, 2019

Respectfully submitted,

/s/ Eric R. Delinsky

Eric R. Delinsky

Alexandra W. Miller

ZUCKERMAN SPAEDER LLP

1800 M Street, NW

Suite 1000

Washington, DC 20036

Phone: (202) 778-1800

Fax : 202-822-8106

E-mail: edelinsky@zuckerman.com

E-mail: smiller@zuckerman.com

*Counsel for CVS Rx Services, Inc. and CVS
Indiana, L.L.C.*

/s/ Kelly A. Moore (consent)

Kelly A. Moore

MORGAN, LEWIS & BOCKIUS LLP

101 Park Avenue

New York, NY 10178

Phone: (212) 309-6612

Fax: (212) 309-6001

E-mail: kelly.moore@morganlewis.com

Elisa P. McEnroe

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103

Phone: (215) 963-5917

Fax: (215) 963-5001

E-mail: elisa.mcenroe@morganlewis.com

*Counsel for Rite Aid of Maryland, Inc. d/b/a
Mid-Atlantic Customer Support Center; Rite
Aid of Ohio, Inc.; and Rite Aid Hdqtrs. Corp.*

/s/ Kaspar Stoffelmayr (consent)

Kaspar Stoffelmayr
BARTLIT BECK LLP
54 West Hubbard Street, Suite 300
Chicago, IL 60654
Phone: (312) 494-4400
Fax: (312) 494-4440
E-mail: kaspar.stoffelmayr@bartlit-beck.com

*Counsel for Walgreen Co. and Walgreen
Eastern Co.*

/s/ Tina M. Tabacchi (consent)

Tina M. Tabacchi
Tara A. Fumerton
JONES DAY
77 West Wacker
Chicago, IL 60601
Phone: (312) 269-4335
Fax: (312) 782-8585
E-mail: tfumerton@jonesday.com
E-mail: tmtabacchi@jonesday.com

Counsel for Walmart Inc.

/s/ Robert M. Barnes (consent)

Robert M. Barnes
Joshua A. Kobrin
MARCUS & SHAPIRA LLP
35th Floor, One Oxford Center
301 Grant Street
Pittsburgh, PA 15219
Phone: (412) 471-3490
Fax: (412) 391-8758
E-mail: rbarnes@marcus-shapira.com
E-mail: kobrin@marcus-shapira.com

*Counsel for Giant Eagle, Inc. and HBC
Service Company*

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2019, the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Eric R. Delinsky
Eric R. Delinsky